

U.S. Sentencing Commission Special Post-Booker Coding Project



Information for All Cases

Cases Sentenced Subsequent to *U.S. v Booker*
(Data Extraction as of September 1, 2005)

Prepared: September 15, 2005



U.S. SENTENCING COMMISSION
SPECIAL POST-BOOKER CODING PROJECT
DATA EXTRACTION DATE: SEPTEMBER 1, 2005

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NATIONAL COMPARISON OF SENTENCE IMPOSED AND POSITION RELATIVE TO THE GUIDELINE RANGE

Cases Sentenced Subsequent to *U.S. v. Booker* with Data Available to USSC on September 1, 2005

| | N | % |
|--|---------------|--------------|
| TOTAL¹ | 36,660 | 100.0 |
| WITHIN GUIDELINE RANGE | 22,642 | 61.8 |
| DEPARTURE ABOVE GUIDELINE RANGE | 102 | 0.3 |
| Upward Departure from the Guideline Range ² | 68 | 0.2 |
| Upward Departure with <i>Booker</i> /18 U.S.C. § 3553 ³ | 34 | 0.1 |
| OTHERWISE ABOVE THE GUIDELINE RANGE | 407 | 1.1 |
| Above the Range with <i>Booker</i> /18 U.S.C. § 3553 ⁴ | 232 | 0.6 |
| All Remaining Cases Above the Guideline Range ⁵ | 175 | 0.5 |
| GOVERNMENT SPONSORED BELOW RANGE | 8,744 | 23.9 |
| §5K1.1 Substantial Assistance Departure | 5,429 | 14.8 |
| §5K3.1 Early Disposition Program Departure | 2,217 | 6.0 |
| Government-Sponsored Departure ⁶ | 1,098 | 3.0 |
| DEPARTURE BELOW GUIDELINE RANGE | 1,234 | 3.4 |
| Downward Departure from the Guideline Range ² | 879 | 2.4 |
| Downward Departure with <i>Booker</i> /18 U.S.C. § 3553 ³ | 355 | 1.0 |
| OTHERWISE BELOW THE GUIDELINE RANGE | 3,531 | 9.6 |
| Below the Range with <i>Booker</i> /18 U.S.C. § 3553 ⁴ | 2,205 | 6.0 |
| All Remaining Cases Below the Guideline Range ⁵ | 1,326 | 3.6 |

¹This table reflects the 37,854 cases sentenced subsequent to the *U.S. v. Booker* decision on January 12, 2005, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 1, 2005. Of this total, there are 1,194 cases excluded for one of two general reasons. Some excluded cases involve certain Class A misdemeanors or other offenses which do not reference a sentencing guideline. Other excluded cases have information missing from the submitted documents that prevents the comparison of the sentence and the guideline range. As missing documents are received, subsequent U.S. Sentencing Commission data releases will incorporate the new information.

²All cases with imposed sentences outside of the guideline range and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual*.

³All cases with imposed sentences outside of the guideline range citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual*, and additionally mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

⁴All cases with imposed sentences outside of the guideline range mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

⁵Cases with imposed sentences outside of the guideline range that do not fall into the three previous categories. Based on the information submitted on the Statement of Reasons, these cases cannot be classified as a guideline departure, or as a sentence outside the guideline range pursuant to *Booker*/18 U.S.C. § 3553. This category includes cases which cite departure reasons that are not affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual* and cases which do not provide any reason for the sentence outside of the guideline range.

⁶Cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, Special Post-*Booker* Coding Project, BOOKER05 (data extraction on September 1, 2005; table prepared on September 15, 2005). Numbers may not sum to 100 percent due to rounding.

MOST FREQUENTLY APPLIED GUIDELINES: COMPARISON OF SENTENCE IMPOSED AND POSITION RELATIVE TO THE GUIDELINE RANGE

Cases Sentenced Subsequent to *U.S. v. Booker* with Data Available to USSC on September 1, 2005

| | Four Most Frequently Applied Primary Guidelines | | | | | | | | | |
|---|---|--------------|-------------------------------|--------------|-----------------------------|--------------|--------------------|--------------|------------------------------|--------------|
| | All Cases | | §2D1.1 Drug Trafficking | | §2L1.2 Unlawful Entry | | §2K2.1 Firearms | | §2B1.1 Theft and Fraud | |
| | N | % | N | % | N | % | N | % | N | % |
| TOTAL¹ | 36,660 | 100.0 | 12,794 | 100.0 | 5,431 | 100.0 | 3,677 | 100.0 | 3,752 | 100.0 |
| WITHIN GUIDELINE RANGE | 22,642 | 61.8 | 6,852 | 53.6 | 3,071 | 56.6 | 2,574 | 70.0 | 2,665 | 71.0 |
| DEPARTURE ABOVE GUIDELINE | 102 | 0.3 | 9 | 0.1 | 11 | 0.2 | 16 | 0.4 | 15 | 0.4 |
| Upward Departure from the Guideline Range ² | 68 | 0.2 | 7 | 0.1 | 7 | 0.1 | 11 | 0.3 | 10 | 0.3 |
| Upward Departure with <i>Booker</i> /18 USC § 3553 ³ | 34 | 0.1 | 2 | 0.0 | 4 | 0.1 | 5 | 0.1 | 5 | 0.1 |
| OTHERWISE ABOVE THE RANGE | 407 | 1.1 | 56 | 0.4 | 50 | 0.9 | 63 | 1.7 | 84 | 2.3 |
| Above the Range with <i>Booker</i> /18 USC § 3553 ⁴ | 232 | 0.6 | 39 | 0.3 | 32 | 0.6 | 30 | 0.8 | 40 | 1.1 |
| All Remaining Cases Above the Guideline Range ⁵ | 175 | 0.5 | 17 | 0.1 | 18 | 0.3 | 33 | 0.9 | 44 | 1.2 |
| GOVERNMENT BELOW GUIDELINE | 8,744 | 23.9 | 4,174 | 32.6 | 1,744 | 32.1 | 473 | 12.9 | 447 | 11.9 |
| §5K1.1 Substantial Assistance Departure | 5,429 | 14.8 | 3,352 | 26.2 | 36 | 0.7 | 367 | 10.0 | 370 | 9.9 |
| §5K3.1 Early Disposition Program Departure | 2,217 | 6.1 | 462 | 3.6 | 1,512 | 27.8 | 14 | 0.4 | 5 | 0.1 |
| Government-Sponsored Departure ⁶ | 1,098 | 3.0 | 360 | 2.8 | 196 | 3.6 | 92 | 2.5 | 72 | 1.9 |
| DEPARTURE BELOW GUIDELINE | 1,234 | 3.4 | 397 | 3.1 | 193 | 3.6 | 155 | 4.3 | 130 | 3.5 |
| Downward Departure from the Guideline Range ² | 879 | 2.4 | 285 | 2.2 | 147 | 2.7 | 98 | 2.7 | 89 | 2.4 |
| Downward Departure with <i>Booker</i> /18 USC § 3553 ³ | 355 | 1.0 | 112 | 0.9 | 46 | 0.9 | 57 | 1.6 | 41 | 1.1 |
| OTHERWISE BELOW THE RANGE | 3,531 | 9.6 | 1,306 | 10.2 | 362 | 6.6 | 396 | 10.7 | 411 | 10.9 |
| Below the Range with <i>Booker</i> /18 USC § 3553 ⁴ | 2,205 | 6.0 | 850 | 6.6 | 224 | 4.1 | 259 | 7.0 | 218 | 5.8 |
| All Remaining Cases Below the Guideline Range ⁵ | 1,326 | 3.6 | 456 | 3.6 | 138 | 2.5 | 137 | 3.7 | 193 | 5.1 |

¹This table reflects the 37,854 cases sentenced subsequent to the *U.S. v. Booker* decision on January 12, 2005, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 1, 2005. Of this total, there are 1,194 cases excluded for one of two general reasons. Some excluded cases involve certain Class A misdemeanors or other offenses which do not reference a sentencing guideline. Other excluded cases have information missing from the submitted documents that prevents the comparison of the sentence and the guideline range. As missing documents are received, subsequent U.S. Sentencing Commission data releases will incorporate the new information.

²All cases with imposed sentences outside of the guideline range and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual*.

³All cases with imposed sentences outside of the guideline range citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual*, and additionally mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

⁴All cases with imposed sentences outside of the guideline range mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

⁵Cases with imposed sentences outside of the guideline range that do not fall into the three previous categories. Based on the information submitted on the Statement of Reasons, these cases cannot be classified as a guideline departure, or as a sentence outside the guideline range pursuant to *Booker*/18 U.S.C. § 3553. This category includes cases which cite departure reasons that are *not* affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal *Guidelines Manual* and cases which do not provide any reason for the sentence outside of the guideline range.

⁶Cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, Special Post-*Booker* Coding Project, BOOKER05 (data extraction on September 1, 2005; table prepared on September 15, 2005). Cases with multiple guideline calculations are classified by the guideline with the highest offense level. Numbers may not sum to 100 percent due to rounding.

OFFENDERS SENTENCED FOR EACH CHAPTER TWO GUIDELINE¹
Special Post-Booker Coding Project (Data Extracted September 1, 2005)

| Guideline | As Primary Guideline | | As Any Guideline | | Guideline | As Primary Guideline | | As Any Guideline | |
|-----------|----------------------|------|------------------|------|-----------|----------------------|-----|------------------|-----|
| | n | % | n | % | | n | % | n | % |
| 2A1.1 | 85 | 0.2 | 94 | 0.2 | 2D1.8 | 30 | 0.1 | 57 | 0.1 |
| 2A1.2 | 19 | 0.1 | 23 | 0.1 | 2D1.9 | 0 | 0.0 | 0 | 0.0 |
| 2A1.3 | 10 | 0.0 | 10 | 0.0 | 2D1.10 | 12 | 0.0 | 13 | 0.0 |
| 2A1.4 | 22 | 0.1 | 22 | 0.1 | 2D1.11 | 105 | 0.3 | 122 | 0.3 |
| 2A1.5 | 7 | 0.0 | 22 | 0.1 | 2D1.12 | 19 | 0.1 | 38 | 0.1 |
| 2A2.1 | 21 | 0.1 | 38 | 0.1 | 2D1.13 | 0 | 0.0 | 0 | 0.0 |
| 2A2.2 | 203 | 0.6 | 236 | 0.6 | 2D2.1 | 204 | 0.6 | 264 | 0.7 |
| 2A2.3 | 24 | 0.1 | 26 | 0.1 | 2D2.2 | 16 | 0.0 | 21 | 0.1 |
| 2A2.4 | 68 | 0.2 | 81 | 0.2 | 2D2.3 | 1 | 0.0 | 1 | 0.0 |
| 2A3.1 | 82 | 0.2 | 88 | 0.2 | 2D3.1 | 4 | 0.0 | 4 | 0.0 |
| 2A3.2 | 91 | 0.3 | 110 | 0.3 | 2D3.2 | 0 | 0.0 | 0 | 0.0 |
| 2A3.3 | 4 | 0.0 | 5 | 0.0 | 2D3.3 | 0 | 0.0 | 0 | 0.0 |
| 2A3.4 | 22 | 0.1 | 29 | 0.1 | 2D3.4 | 0 | 0.0 | 0 | 0.0 |
| 2A4.1 | 35 | 0.1 | 46 | 0.1 | 2D3.5 | 0 | 0.0 | 0 | 0.0 |
| 2A4.2 | 1 | 0.0 | 1 | 0.0 | 2E1.1 | 20 | 0.1 | 73 | 0.2 |
| 2A5.1 | 0 | 0.0 | 1 | 0.0 | 2E1.2 | 8 | 0.0 | 56 | 0.1 |
| 2A5.2 | 4 | 0.0 | 4 | 0.0 | 2E1.3 | 0 | 0.0 | 15 | 0.0 |
| 2A5.3 | 0 | 0.0 | 0 | 0.0 | 2E1.4 | 9 | 0.0 | 13 | 0.0 |
| 2A6.1 | 81 | 0.2 | 87 | 0.2 | 2E1.5 | 0 | 0.0 | 0 | 0.0 |
| 2A6.2 | 4 | 0.0 | 9 | 0.0 | 2E2.1 | 18 | 0.1 | 24 | 0.1 |
| 2B1.1 | 3,866 | 11.0 | 4,235 | 10.9 | 2E3.1 | 72 | 0.2 | 89 | 0.2 |
| 2B1.2 | 0 | 0.0 | 0 | 0.0 | 2E3.2 | 0 | 0.0 | 0 | 0.0 |
| 2B1.3 | 4 | 0.0 | 4 | 0.0 | 2E3.3 | 0 | 0.0 | 0 | 0.0 |
| 2B1.4 | 1 | 0.0 | 1 | 0.0 | 2E4.1 | 15 | 0.0 | 24 | 0.1 |
| 2B1.5 | 6 | 0.0 | 6 | 0.0 | 2E5.1 | 9 | 0.0 | 14 | 0.0 |
| 2B2.1 | 33 | 0.1 | 38 | 0.1 | 2E5.2 | 0 | 0.0 | 0 | 0.0 |
| 2B2.2 | 0 | 0.0 | 0 | 0.0 | 2E5.3 | 2 | 0.0 | 6 | 0.0 |
| 2B2.3 | 1 | 0.0 | 1 | 0.0 | 2E5.4 | 0 | 0.0 | 0 | 0.0 |
| 2B3.1 | 1,012 | 2.9 | 1,084 | 2.8 | 2E5.5 | 0 | 0.0 | 0 | 0.0 |
| 2B3.2 | 28 | 0.1 | 49 | 0.1 | 2E5.6 | 0 | 0.0 | 0 | 0.0 |
| 2B3.3 | 8 | 0.0 | 13 | 0.0 | 2F1.1 | 737 | 2.1 | 792 | 2.0 |
| 2B4.1 | 39 | 0.1 | 41 | 0.1 | 2F1.2 | 2 | 0.0 | 3 | 0.0 |
| 2B5.1 | 262 | 0.7 | 285 | 0.7 | 2G1.1 | 41 | 0.1 | 77 | 0.2 |
| 2B5.2 | 0 | 0.0 | 0 | 0.0 | 2G1.2 | 1 | 0.0 | 1 | 0.0 |
| 2B5.3 | 75 | 0.2 | 89 | 0.2 | 2G1.3 | 19 | 0.1 | 19 | 0.0 |
| 2B5.4 | 0 | 0.0 | 0 | 0.0 | 2G2.1 | 55 | 0.2 | 64 | 0.2 |
| 2B6.1 | 10 | 0.0 | 10 | 0.0 | 2G2.2 | 249 | 0.7 | 260 | 0.7 |
| 2C1.1 | 134 | 0.4 | 151 | 0.4 | 2G2.3 | 0 | 0.0 | 0 | 0.0 |
| 2C1.2 | 11 | 0.0 | 11 | 0.0 | 2G2.4 | 245 | 0.7 | 280 | 0.7 |
| 2C1.3 | 5 | 0.0 | 5 | 0.0 | 2G2.5 | 1 | 0.0 | 1 | 0.0 |
| 2C1.4 | 2 | 0.0 | 2 | 0.0 | 2G3.1 | 8 | 0.0 | 10 | 0.0 |
| 2C1.5 | 0 | 0.0 | 0 | 0.0 | 2G3.2 | 0 | 0.0 | 0 | 0.0 |
| 2C1.6 | 0 | 0.0 | 0 | 0.0 | 2H1.1 | 31 | 0.1 | 34 | 0.1 |
| 2C1.7 | 19 | 0.1 | 22 | 0.1 | 2H1.2 | 0 | 0.0 | 0 | 0.0 |
| 2D1.1 | 13,084 | 37.1 | 13,759 | 35.3 | 2H1.3 | 0 | 0.0 | 0 | 0.0 |
| 2D1.2 | 177 | 0.5 | 187 | 0.5 | 2H1.4 | 0 | 0.0 | 0 | 0.0 |
| 2D1.3 | 0 | 0.0 | 0 | 0.0 | 2H1.5 | 0 | 0.0 | 0 | 0.0 |
| 2D1.4 | 0 | 0.0 | 0 | 0.0 | 2H2.1 | 6 | 0.0 | 7 | 0.0 |
| 2D1.5 | 10 | 0.0 | 13 | 0.0 | 2H3.1 | 4 | 0.0 | 5 | 0.0 |
| 2D1.6 | 17 | 0.0 | 103 | 0.3 | 2H3.2 | 0 | 0.0 | 0 | 0.0 |
| 2D1.7 | 10 | 0.0 | 11 | 0.0 | 2H3.3 | 6 | 0.0 | 10 | 0.0 |

(continued)

| Guideline | As Primary Guideline | | As Any Guideline | | Guideline | As Primary Guideline | | As Any Guideline | |
|-----------|----------------------|------|------------------|------|---|----------------------|-----|------------------|-----|
| | n | % | n | % | | n | % | n | % |
| 2H4.1 | 7 | 0.0 | 7 | 0.0 | 2M4.1 | 0 | 0.0 | 0 | 0.0 |
| 2H4.2 | 0 | 0.0 | 0 | 0.0 | 2M5.1 | 7 | 0.0 | 7 | 0.0 |
| 2J1.1 | 0 | 0.0 | 16 | 0.0 | 2M5.2 | 13 | 0.0 | 15 | 0.0 |
| 2J1.2 | 66 | 0.2 | 99 | 0.3 | 2M5.3 | 2 | 0.0 | 5 | 0.0 |
| 2J1.3 | 33 | 0.1 | 51 | 0.1 | 2M6.1 | 10 | 0.0 | 10 | 0.0 |
| 2J1.4 | 9 | 0.0 | 17 | 0.0 | 2M6.2 | 1 | 0.0 | 1 | 0.0 |
| 2J1.5 | 2 | 0.0 | 2 | 0.0 | 2N1.1 | 0 | 0.0 | 0 | 0.0 |
| 2J1.6 | 30 | 0.1 | 45 | 0.1 | 2N1.2 | 1 | 0.0 | 1 | 0.0 |
| 2J1.7 | 79 | 0.2 | 83 | 0.2 | 2N1.3 | 0 | 0.0 | 0 | 0.0 |
| 2J1.8 | 0 | 0.0 | 0 | 0.0 | 2N2.1 | 19 | 0.1 | 39 | 0.1 |
| 2J1.9 | 0 | 0.0 | 0 | 0.0 | 2N3.1 | 1 | 0.0 | 3 | 0.0 |
| 2K1.1 | 3 | 0.0 | 4 | 0.0 | 2P1.1 | 123 | 0.3 | 138 | 0.4 |
| 2K1.2 | 0 | 0.0 | 0 | 0.0 | 2P1.2 | 51 | 0.1 | 65 | 0.2 |
| 2K1.3 | 21 | 0.1 | 22 | 0.1 | 2P1.3 | 8 | 0.0 | 8 | 0.0 |
| 2K1.4 | 30 | 0.1 | 40 | 0.1 | 2P1.4 | 0 | 0.0 | 0 | 0.0 |
| 2K1.5 | 9 | 0.0 | 9 | 0.0 | 2Q1.1 | 0 | 0.0 | 0 | 0.0 |
| 2K1.6 | 1 | 0.0 | 1 | 0.0 | 2Q1.2 | 20 | 0.1 | 22 | 0.1 |
| 2K1.7 | 0 | 0.0 | 0 | 0.0 | 2Q1.3 | 28 | 0.1 | 28 | 0.1 |
| 2K2.1 | 3,728 | 10.6 | 4,058 | 10.4 | 2Q1.4 | 0 | 0.0 | 0 | 0.0 |
| 2K2.2 | 0 | 0.0 | 0 | 0.0 | 2Q1.5 | 0 | 0.0 | 0 | 0.0 |
| 2K2.3 | 0 | 0.0 | 0 | 0.0 | 2Q1.6 | 0 | 0.0 | 0 | 0.0 |
| 2K2.4 | 1 | 0.0 | 2 | 0.0 | 2Q2.1 | 65 | 0.2 | 68 | 0.2 |
| 2K2.5 | 8 | 0.0 | 9 | 0.0 | 2Q2.2 | 0 | 0.0 | 0 | 0.0 |
| 2K2.6 | 1 | 0.0 | 2 | 0.0 | 2R1.1 | 10 | 0.0 | 11 | 0.0 |
| 2K3.1 | 0 | 0.0 | 0 | 0.0 | 2S1.1 | 532 | 1.5 | 623 | 1.6 |
| 2L1.1 | 1,599 | 4.5 | 1,647 | 4.2 | 2S1.2 | 13 | 0.0 | 26 | 0.1 |
| 2L1.2 | 5,511 | 15.6 | 5,592 | 14.4 | 2S1.3 | 145 | 0.4 | 173 | 0.4 |
| 2L1.3 | 0 | 0.0 | 0 | 0.0 | 2S1.4 | 0 | 0.0 | 0 | 0.0 |
| 2L2.1 | 237 | 0.7 | 261 | 0.7 | 2T1.1 | 296 | 0.8 | 378 | 1.0 |
| 2L2.2 | 537 | 1.5 | 576 | 1.5 | 2T1.2 | 0 | 0.0 | 0 | 0.0 |
| 2L2.3 | 0 | 0.0 | 0 | 0.0 | 2T1.3 | 1 | 0.0 | 1 | 0.0 |
| 2L2.4 | 0 | 0.0 | 0 | 0.0 | 2T1.4 | 60 | 0.2 | 65 | 0.2 |
| 2L2.5 | 0 | 0.0 | 0 | 0.0 | 2T1.5 | 0 | 0.0 | 0 | 0.0 |
| 2M1.1 | 1 | 0.0 | 1 | 0.0 | 2T1.6 | 7 | 0.0 | 8 | 0.0 |
| 2M2.1 | 0 | 0.0 | 0 | 0.0 | 2T1.7 | 0 | 0.0 | 0 | 0.0 |
| 2M2.2 | 0 | 0.0 | 0 | 0.0 | 2T1.8 | 0 | 0.0 | 0 | 0.0 |
| 2M2.3 | 0 | 0.0 | 0 | 0.0 | 2T1.9 | 8 | 0.0 | 16 | 0.0 |
| 2M2.4 | 0 | 0.0 | 0 | 0.0 | 2T2.1 | 0 | 0.0 | 0 | 0.0 |
| 2M3.1 | 0 | 0.0 | 0 | 0.0 | 2T2.2 | 0 | 0.0 | 0 | 0.0 |
| 2M3.2 | 0 | 0.0 | 0 | 0.0 | 2T3.1 | 20 | 0.1 | 25 | 0.1 |
| 2M3.3 | 1 | 0.0 | 1 | 0.0 | 2T3.2 | 0 | 0.0 | 0 | 0.0 |
| 2M3.4 | 0 | 0.0 | 0 | 0.0 | 2T4.1 | 0 | 0.0 | 0 | 0.0 |
| 2M3.5 | 0 | 0.0 | 0 | 0.0 | 2X1.1 | 73 | 0.2 | 823 | 2.1 |
| 2M3.6 | 0 | 0.0 | 0 | 0.0 | 2X2.1 | 0 | 0.0 | 36 | 0.1 |
| 2M3.7 | 0 | 0.0 | 0 | 0.0 | 2X3.1 | 68 | 0.2 | 78 | 0.2 |
| 2M3.8 | 0 | 0.0 | 0 | 0.0 | 2X4.1 | 247 | 0.7 | 258 | 0.7 |
| 2M3.9 | 0 | 0.0 | 0 | 0.0 | 2X5.1 | 0 | 0.0 | 32 | 0.1 |
| | | | | | Total number of guidelines applied: | | | | |
| | | | | | 38,957 | | | | |
| | | | | | Number of cases with at least one guideline applied: | | | | |
| | | | | | 35,289 | | | | |

¹Of the 37,854 cases, 2,565 were excluded due to missing guideline applied. The total for any guideline can exceed that for primary guideline because a case can have several guidelines applied, but only one primary guideline.

OFFENDERS IN EACH GUIDELINE SENTENCING RANGE¹

Special Post-Booker Coding Project (Data Extracted September 1, 2005)

| FINAL GUIDELINE RANGE (in months) | Number | Percent | Cumulative Percent |
|--------------------------------------|---------------|--------------|-----------------------|
| 0-6 | 2,506 | 7.6 | 7.6 |
| 1-7 | 366 | 1.1 | 8.8 |
| 2-8 | 354 | 1.1 | 9.8 |
| 3-9 | 1 | 0.0 | 9.8 |
| 4-10 | 264 | 0.8 | 10.6 |
| 6-12 | 1,243 | 3.8 | 14.4 |
| 8-14 | 479 | 1.5 | 15.9 |
| 9-15 | 49 | 0.1 | 16.1 |
| 10-16 | 1,269 | 3.9 | 19.9 |
| 12-18 | 1,479 | 4.5 | 24.4 |
| 15-21 | 1,140 | 3.5 | 27.9 |
| 18-24 | 1,432 | 4.4 | 32.3 |
| 21-27 | 744 | 2.3 | 34.5 |
| 24-30 | 1,440 | 4.4 | 38.9 |
| 27-33 | 690 | 2.1 | 41.0 |
| 30-37 | 1,441 | 4.4 | 45.4 |
| 33-41 | 671 | 2.0 | 47.5 |
| 37-46 | 1,654 | 5.0 | 52.5 |
| 41-51 | 926 | 2.8 | 55.4 |
| 46-57 | 2,019 | 6.2 | 61.5 |
| 51-63 | 722 | 2.2 | 63.7 |
| 57-71 | 1,552 | 4.7 | 68.5 |
| 63-78 | 596 | 1.8 | 70.3 |
| 70-87 | 1,599 | 4.9 | 75.2 |
| 77-96 | 506 | 1.5 | 76.7 |
| 78-97 | 322 | 1.0 | 77.7 |
| 84-105 | 295 | 0.9 | 78.6 |
| 87-108 | 700 | 2.1 | 80.7 |
| 92-115 | 224 | 0.7 | 81.4 |
| 97-121 | 391 | 1.2 | 82.6 |
| 100-125 | 204 | 0.6 | 83.2 |
| 108-135 | 652 | 2.0 | 85.2 |
| 110-137 | 127 | 0.4 | 85.6 |
| 120-150 | 91 | 0.3 | 85.9 |
| 121-151 | 433 | 1.3 | 87.2 |
| 130-162 | 57 | 0.2 | 87.4 |
| 135-168 | 656 | 2.0 | 89.4 |
| 140-175 | 105 | 0.3 | 89.7 |
| 151-188 | 616 | 1.9 | 91.6 |
| 168-210 | 487 | 1.5 | 93.0 |
| 188-235 | 638 | 1.9 | 95.0 |
| 210-262 | 298 | 0.9 | 95.9 |
| 235-293 | 238 | 0.7 | 96.6 |
| 262-327 | 488 | 1.5 | 98.1 |
| 292-365 | 158 | 0.5 | 98.6 |
| 324-405 | 87 | 0.3 | 98.9 |
| 360-Life | 276 | 0.8 | 99.7 |
| Life | 97 | 0.3 | 100.0 |
| TOTAL | 32,782 | 100.0 | -- |

¹Of the 37,854 cases, the Commission received complete guideline application information for 32,787. Of these, five were excluded due to missing sentencing range.

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extracted September 1, 2005; table prepared September 15, 2005). Percents may not sum to 100 percent due to rounding.

GUIDELINE OFFENDERS IN EACH CIRCUIT AND DISTRICT¹
Special Post-Booker Coding Project (Data Extracted September 1, 2005)

| CIRCUIT | | | CIRCUIT | | |
|-----------------------|---------------|--------------|------------------------|--------------|-------------|
| District | Number | Percent | District | Number | Percent |
| TOTAL | 37,854 | 100.0 | | | |
| D.C. CIRCUIT | 312 | 0.8 | FIFTH CIRCUIT | 8,227 | 21.7 |
| District of Columbia | 312 | 0.8 | Louisiana | | |
| | | | Eastern | 206 | 0.5 |
| | | | Middle | 110 | 0.3 |
| | | | Western | 255 | 0.7 |
| FIRST CIRCUIT | 854 | 2.3 | Mississippi | | |
| Maine | 139 | 0.4 | Northern | 120 | 0.3 |
| Massachusetts | 273 | 0.7 | Southern | 222 | 0.6 |
| New Hampshire | 104 | 0.3 | Texas | | |
| Puerto Rico | 262 | 0.7 | Eastern | 460 | 1.2 |
| Rhode Island | 76 | 0.2 | Northern | 528 | 1.4 |
| | | | Southern | 3,462 | 9.1 |
| SECOND CIRCUIT | 2,242 | 5.9 | Western | 2,864 | 7.6 |
| Connecticut | 211 | 0.6 | | | |
| New York | | | SIXTH CIRCUIT | 2,836 | 7.5 |
| Eastern | 705 | 1.9 | Kentucky | | |
| Northern | 208 | 0.5 | Eastern | 270 | 0.7 |
| Southern | 666 | 1.8 | Western | 211 | 0.6 |
| Western | 333 | 0.9 | Michigan | | |
| Vermont | 119 | 0.3 | Eastern | 371 | 1.0 |
| | | | Western | 220 | 0.6 |
| THIRD CIRCUIT | 1,953 | 5.2 | Ohio | | |
| Delaware | 99 | 0.3 | Northern | 511 | 1.3 |
| New Jersey | 592 | 1.6 | Southern | 333 | 0.9 |
| Pennsylvania | | | Tennessee | | |
| Eastern | 579 | 1.5 | Eastern | 377 | 1.0 |
| Middle | 378 | 1.0 | Middle | 172 | 0.5 |
| Western | 248 | 0.7 | Western | 371 | 1.0 |
| Virgin Islands | 57 | 0.2 | | | |
| | | | SEVENTH CIRCUIT | 1,703 | 4.5 |
| FOURTH CIRCUIT | 3,515 | 9.3 | Illinois | | |
| Maryland | 412 | 1.1 | Central | 225 | 0.6 |
| North Carolina | | | Northern | 628 | 1.7 |
| Eastern | 319 | 0.8 | Southern | 135 | 0.4 |
| Middle | 279 | 0.7 | Indiana | | |
| Western | 300 | 0.8 | Northern | 216 | 0.6 |
| South Carolina | 623 | 1.6 | Southern | 162 | 0.4 |
| Virginia | | | Wisconsin | | |
| Eastern | 835 | 2.2 | Eastern | 221 | 0.6 |
| Western | 374 | 1.0 | Western | 116 | 0.3 |
| West Virginia | | | | | |
| Northern | 163 | 0.4 | | | |
| Southern | 210 | 0.6 | | | |

(continued)

| CIRCUIT | | | CIRCUIT | | |
|--------------------------|--------------|-------------|-------------------------|--------------|------------|
| District | Number | Percent | District | Number | Percent |
| EIGHTH CIRCUIT | 2,714 | 7.2 | TENTH CIRCUIT | 2,940 | 7.8 |
| Arkansas | | | Colorado | 357 | 0.9 |
| Eastern | 137 | 0.4 | Kansas | 380 | 1.0 |
| Western | 114 | 0.3 | New Mexico | 1,355 | 3.6 |
| Iowa | | | Oklahoma | | |
| Northern | 203 | 0.5 | Eastern | 55 | 0.1 |
| Southern | 176 | 0.5 | Northern | 110 | 0.3 |
| Minnesota | 297 | 0.8 | Western | 132 | 0.3 |
| Missouri | | | Utah | 443 | 1.2 |
| Eastern | 558 | 1.5 | Wyoming | 108 | 0.3 |
| Western | 361 | 1.0 | | | |
| Nebraska | 488 | 1.3 | ELEVENTH CIRCUIT | 3,644 | 9.6 |
| North Dakota | 120 | 0.3 | Alabama | | |
| South Dakota | 260 | 0.7 | Middle | 113 | 0.3 |
| | | | Northern | 220 | 0.6 |
| NINTH CIRCUIT | 6,914 | 18.3 | Southern | 152 | 0.4 |
| Alaska | 145 | 0.4 | Florida | | |
| Arizona | 2,058 | 5.4 | Middle | 983 | 2.6 |
| California | | | Northern | 199 | 0.5 |
| Central | 671 | 1.8 | Southern | 1,171 | 3.1 |
| Eastern | 483 | 1.3 | Georgia | | |
| Northern | 375 | 1.0 | Middle | 232 | 0.6 |
| Southern | 1,265 | 3.3 | Northern | 394 | 1.0 |
| Guam | 35 | 0.1 | Southern | 180 | 0.5 |
| Hawaii | 268 | 0.7 | | | |
| Idaho | 122 | 0.3 | | | |
| Montana | 217 | 0.6 | | | |
| Nevada | 257 | 0.7 | | | |
| Northern Mariana Islands | 14 | 0.0 | | | |
| Oregon | 310 | 0.8 | | | |
| Washington | | | | | |
| Eastern | 242 | 0.6 | | | |
| Western | 452 | 1.2 | | | |

SOURCE: U.S. Sentencing Commission, Special Post-Booker Coding Project, BOOKER05 (data extracted September 1, 2005; table prepared September 15, 2005). Percents may not sum to 100 percent due to rounding.

Guideline Application Trends, National and Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹
(Post-Booker data extracted September 1, 2005)

NATIONAL

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|--------------------|-------------------|--------------------|
| Within Range | 64.5% | 64.0% | 65.0% | 69.4% | 61.8% |
| Upward Departures | 0.7% | 0.6% | 0.8% | 0.8% | 0.3% ² |
| Otherwise Above Range | — | — | — | — | 1.1% ³ |
| Substantial Assistance Departures | 17.9% | 17.1% | 17.4% | 15.9% | 14.8% |
| Other Gov't Sponsored Departures | — | — | — | 6.3% ⁴ | 9.0% ⁴ |
| Other Downward Departures | 17.0% ⁵ | 18.3% ⁵ | 16.8% ⁵ | 7.5% | 3.4% ² |
| Otherwise Below Range | — | — | — | — | 9.6% ³ |

DC CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|-------------------|-------------------|--------------------|
| Within Range | 69.4% | 74.6% | 59.9% | 64.6% | 53.3% |
| Upward Departures | 0.3% | 0.4% | 0.5% | 0.2% | 0.0% ² |
| Otherwise Above Range | — | — | — | — | 1.3% ³ |
| Substantial Assistance Departures | 19.3% | 13.8% | 31.1% | 26.4% | 27.3% |
| Other Gov't Sponsored Departures | — | — | — | 4.4% ⁴ | 6.5% ⁴ |
| Other Downward Departures | 11.0% ⁵ | 11.2% ⁵ | 8.5% ⁵ | 4.4% | 2.9% ² |
| Otherwise Below Range | — | — | — | — | 8.8% ³ |

FIRST CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|-------------------|-------------------|--------------------|
| Within Range | 69.9% | 73.3% | 75.7% | 77.3% | 62.7% |
| Upward Departures | 0.8% | 0.4% | 0.6% | 0.7% | 0.4% ² |
| Otherwise Above Range | — | — | — | — | 2.4% ³ |
| Substantial Assistance Departures | 15.9% | 14.6% | 14.4% | 13.5% | 12.7% |
| Other Gov't Sponsored Departures | — | — | — | 0.7% ⁴ | 2.4% ⁴ |
| Other Downward Departures | 13.4% ⁵ | 11.7% ⁵ | 9.3% ⁵ | 7.8% | 4.3% ² |
| Otherwise Below Range | — | — | — | — | 15.1% ³ |

(continued on next page)

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Guideline Application Trends, National and CircuitFiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹**SECOND CIRCUIT**

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|--------------------|-------------------|----------------------------|
| Within Range | 55.9% | 57.5% | 61.3% | 63.2% | 48.6% |
| Upward Departures | 0.7% | 0.4% | 0.6% | 0.5% | 0.1% ² |
| Otherwise Above Range | — | — | — | — | 0.7% ³ |
| Substantial Assistance Departures | 23.9% | 21.7% | 19.0% | 17.5% | 21.9% |
| Other Gov't Sponsored Departures | — | — | — | 2.8% ⁴ | 3.0% ⁴ |
| Other Downward Departures | 19.6% ⁵ | 20.4% ⁵ | 19.1% ⁵ | 16.0% | 7.5% ² |
| Otherwise Below Range | — | — | — | — | 18.1% ³ |

THIRD CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|-------------------|-------------------|-------------------|-------------------|----------------------------|
| Within Range | 59.7% | 60.2% | 58.9% | 62.3% | 51.0% |
| Upward Departures | 0.7% | 0.5% | 0.9% | 0.9% | 0.3% ² |
| Otherwise Above Range | — | — | — | — | 1.3% ³ |
| Substantial Assistance Departures | 30.5% | 30.6% | 32.3% | 28.8% | 28.0% |
| Other Gov't Sponsored Departures | — | — | — | 0.6% ⁴ | 1.6% ⁴ |
| Other Downward Departures | 9.1% ⁵ | 8.8% ⁵ | 7.9% ⁵ | 7.4% | 3.9% ² |
| Otherwise Below Range | — | — | — | — | 14.0% ³ |

FOURTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|-------------------|-------------------|-------------------|-------------------|----------------------------|
| Within Range | 73.4% | 73.7% | 76.6% | 77.0% | 65.9% |
| Upward Departures | 0.8% | 0.9% | 0.7% | 0.6% | 0.4% ² |
| Otherwise Above Range | — | — | — | — | 0.9% ³ |
| Substantial Assistance Departures | 20.9% | 20.2% | 18.6% | 18.3% | 18.7% |
| Other Gov't Sponsored Departures | — | — | — | 0.3% ⁴ | 1.8% ⁴ |
| Other Downward Departures | 5.0% ⁵ | 5.2% ⁵ | 4.2% ⁵ | 3.8% | 2.5% ² |
| Otherwise Below Range | — | — | — | — | 9.9% ³ |

(continued on next page)

(continued – page 3 of 5)

Guideline Application, National and Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

FIFTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|--------------------|-------------------|--------------------|
| Within Range | 72.3% | 69.1% | 71.0% | 73.7% | 71.6% |
| Upward Departures | 0.5% | 0.5% | 0.9% | 0.9% | 0.3% ² |
| Otherwise Above Range | — | — | — | — | 1.5% ³ |
| Substantial Assistance Departures | 13.6% | 12.3% | 13.4% | 12.5% | 8.3% |
| Other Gov't Sponsored Departures | — | — | — | 5.4% ⁴ | 8.9% ⁴ |
| Other Downward Departures | 13.6% ⁵ | 18.1% ⁵ | 14.7% ⁵ | 7.5% | 2.7% ² |
| Otherwise Below Range | — | — | — | — | 6.7% ³ |

SIXTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|-------------------|-------------------|-------------------|-------------------|--------------------|
| Within Range | 67.2% | 65.1% | 66.9% | 69.1% | 59.4% |
| Upward Departures | 0.6% | 0.5% | 0.8% | 0.4% | 0.2% ² |
| Otherwise Above Range | — | — | — | — | 1.1% ³ |
| Substantial Assistance Departures | 24.4% | 27.2% | 26.0% | 24.6% | 24.1% |
| Other Gov't Sponsored Departures | — | — | — | 0.5% ⁴ | 2.0% ⁴ |
| Other Downward Departures | 7.7% ⁵ | 7.3% ⁵ | 6.3% ⁵ | 5.3% | 2.5% ² |
| Otherwise Below Range | — | — | — | — | 10.8% ³ |

SEVENTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|-------------------|-------------------|-------------------|-------------------|--------------------|
| Within Range | 69.5% | 71.0% | 69.3% | 72.5% | 63.0% |
| Upward Departures | 1.1% | 1.0% | 0.8% | 1.0% | 0.4% ² |
| Otherwise Above Range | — | — | — | — | 0.9% ³ |
| Substantial Assistance Departures | 21.7% | 21.2% | 21.8% | 21.2% | 16.8% |
| Other Gov't Sponsored Departures | — | — | — | 0.8% ⁴ | 2.8% ⁴ |
| Other Downward Departures | 7.7% ⁵ | 6.9% ⁵ | 8.1% ⁵ | 4.5% | 3.8% ² |
| Otherwise Below Range | — | — | — | — | 12.3% ³ |

(continued on next page)

(continued – page 4 of 5)

Guideline Application Trends By Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

EIGHTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|--------------------|-------------------|--------------------|
| Within Range | 65.4% | 66.8% | 69.3% | 72.2% | 64.3% |
| Upward Departures | 1.2% | 0.7% | 1.2% | 1.1% | 0.2% ² |
| Otherwise Above Range | — | — | — | — | 1.4% ³ |
| Substantial Assistance Departures | 23.1% | 22.0% | 18.9% | 17.6% | 14.5% |
| Other Gov't Sponsored Departures | — | — | — | 2.0% ⁴ | 4.8% ⁴ |
| Other Downward Departures | 10.3% ⁵ | 10.5% ⁵ | 10.7% ⁵ | 7.1% | 3.5% ² |
| Otherwise Below Range | — | — | — | — | 11.3% ³ |

NINTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|
| Within Range | 49.9% | 50.1% | 48.8% | 59.6% | 49.3% |
| Upward Departures | 0.6% | 0.4% | 0.7% | 1.1% | 0.3% ² |
| Otherwise Above Range | — | — | — | — | 0.7% ³ |
| Substantial Assistance Departures | 11.6% | 10.7% | 11.8% | 10.2% | 10.6% |
| Other Gov't Sponsored Departures | — | — | — | 19.2% ⁴ | 26.8% ⁴ |
| Other Downward Departures | 37.9% ⁵ | 38.7% ⁵ | 38.7% ⁵ | 9.9% | 3.7% ² |
| Otherwise Below Range | — | — | — | — | 8.6% ³ |

TENTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|
| Within Range | 69.9% | 65.0% | 66.6% | 73.1% | 65.5% |
| Upward Departures | 0.4% | 0.7% | 0.6% | 0.6% | 0.1% ² |
| Otherwise Above Range | — | — | — | — | 0.7% ³ |
| Substantial Assistance Departures | 10.9% | 11.0% | 11.0% | 9.4% | 10.0% |
| Other Gov't Sponsored Departures | — | — | — | 11.4% ⁴ | 13.9% ⁴ |
| Other Downward Departures | 18.8% ⁵ | 23.3% ⁵ | 21.9% ⁵ | 5.5% | 2.9% ² |
| Otherwise Below Range | — | — | — | — | 6.8% ³ |

(continued on next page)

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Guideline Application Trends By Circuit

Fiscal Years 2000, 2001, 2002, 2003, and Post-Booker FY2005¹

ELEVENTH CIRCUIT

| Position of Sentence Relative to Guideline Range | FY2000 | FY2001 | FY2002 | FY2003 | FY2005 (Booker) |
|---|-------------------|-------------------|-------------------|-------------------|--------------------|
| Within Range | 71.0% | 72.1 | 70.2% | 74.5% | 68.3% |
| Upward Departures | 0.7% | 0.6% | 0.7% | 0.8% | 0.5% ² |
| Otherwise Above Range | — | — | — | — | 1.3% ³ |
| Substantial Assistance Departures | 21.4% | 19.9% | 22.4% | 19.9% | 17.6% |
| Other Gov't Sponsored Departures | — | — | — | 0.3% ⁴ | 1.4% ⁴ |
| Other Downward Departures | 6.9% ⁵ | 7.5% ⁵ | 6.7% ⁵ | 4.5% | 2.8% ² |
| Otherwise Below Range | — | — | — | — | 8.1% ³ |

¹In 2003, the Commission augmented its data coding procedures to determine the proportion of non-substantial assistance downward departures that were initiated by the government. Data prior to 2003 does not distinguish non-substantial assistance government initiated downward departures from other downward departures. In this table, data from FY2000, 2001, and 2002 on “Other Downward Departures” includes both government initiated and non-government initiated downward departures. For FY2003, the “Other Downward Departures” data distinguishes departures that were initiated or supported by the government from those not initiated/supported by the government. For example, using the national data, 6.3% of downward departures were government initiated and 7.5% were other downward departures; the combination of these values (13.8%) is directly comparable to the data for “Other Downward Departures” from the preceding years. For FY2005, this table reflects cases sentenced subsequent to the *US v Booker* decision on January 12, 2005, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 1, 2005. In these cases, a further distinction is made among below guideline range sentences. The data report three categories of below range sentences: those initiated/supported by the government; those not initiated by the government and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual; and those mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range. Cases citing both reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual and mentioning *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors are included in the “Other Downward Departures” category.

²Includes cases with imposed sentences outside of the guideline range and citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual and all cases with imposed sentences outside of the guideline range citing reasons for departure limited to, and affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual, and additionally mentioning either *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range.

³Includes cases with imposed sentences outside of the guideline range mentioning only *U.S. v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for a sentence outside of the guideline range and all cases with imposed sentences outside of the guideline range that do not fall into the previous category. This category includes cases which cite departure reasons that are *not* affirmatively and specifically identified in the provisions, policy statements, or commentary of the federal Guidelines Manual and cases which do not provide any reason for the sentence outside of the guideline range.

⁴Cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant. Note that §5K3.1 (Early Disposition Program) cases are included in this category.

⁵Includes cases in which the below range sentence was initiated/supported by the government and those not initiated/supported by the government. Prior to FY2003, the Commission did not code this distinction. SOURCE: U.S. Sentencing Commission Sourcebook of Federal Sentencing, FY2000 through FY2003, Table 26; Special Post-Booker Coding Project, BOOKER05 (data extracted September 1, 2005; table prepared September 15, 2005). Percents may not sum to 100 percent due to rounding.

Distribution of Offenders Receiving Sentencing Options for the Most Frequently Applied Guidelines

Fiscal Years 1999-2003 and Post-Booker Fiscal Year 2005 (data extracted September 1, 2005)

| | FY 1999 | | FY 2000 | | FY 2001 | | FY 2002 | | FY 2003 | | Post-Booker | |
|--|---------|-------|---------|-------|---------|-------|---------|-------|---------|-------|-------------|-------|
| | N | % | N | % | N | % | N | % | N | % | N | % |
| Drug Trafficking §2D1.1¹ | 20,763 | 100.0 | 21,715 | 100.0 | 22,608 | 100.0 | 24,013 | 100.0 | 23,833 | 100.0 | 12,659 | 100.0 |
| Prison only ² | 19,406 | 93.5 | 20,422 | 94.0 | 21,143 | 93.5 | 22,407 | 93.3 | 22,455 | 94.2 | 11,953 | 94.4 |
| Prison plus confinement conditions ³ | 481 | 2.3 | 430 | 2.0 | 469 | 2.1 | 515 | 2.1 | 402 | 1.7 | 281 | 2.2 |
| Probation plus confinement conditions ⁴ | 400 | 1.9 | 379 | 1.7 | 488 | 2.2 | 465 | 1.9 | 469 | 2.0 | 188 | 1.5 |
| Probation only ⁵ | 476 | 2.3 | 484 | 2.2 | 508 | 2.2 | 626 | 2.6 | 507 | 2.1 | 237 | 1.9 |
| Immigration Unlawful Entry §2L1.2¹ | 5,547 | 100.0 | 6,341 | 100.0 | 5,946 | 100.0 | 6,993 | 100.0 | 9,167 | 100.0 | 5,452 | 100.0 |
| Prison only ² | 5,495 | 99.1 | 6,291 | 99.2 | 5,901 | 99.2 | 6,952 | 99.4 | 9,132 | 99.6 | 5,404 | 99.1 |
| Prison plus confinement conditions ³ | 13 | 0.2 | 10 | 0.2 | 14 | 0.2 | 7 | 0.1 | 11 | 0.1 | 12 | 0.2 |
| Probation plus confinement conditions ⁴ | 2 | 0.0 | 1 | 0.0 | 1 | 0.0 | 0 | 0.0 | 2 | 0.0 | 1 | 0.0 |
| Probation only ⁵ | 37 | 0.7 | 39 | 0.6 | 30 | 0.5 | 34 | 0.5 | 22 | 0.2 | 35 | 0.6 |
| Firearms §2K2.1¹ | 2,218 | 100.0 | 2,997 | 100.0 | 3,629 | 100.0 | 4,173 | 100.0 | 5,425 | 100.0 | 3,541 | 100.0 |
| Prison only ² | 1,976 | 89.1 | 2,604 | 86.9 | 3,177 | 87.5 | 3,680 | 88.2 | 4,779 | 88.1 | 3,161 | 89.3 |
| Prison plus confinement conditions ³ | 82 | 3.7 | 104 | 3.5 | 141 | 3.9 | 158 | 3.8 | 174 | 3.2 | 112 | 3.2 |
| Probation plus confinement conditions ⁴ | 87 | 3.9 | 147 | 4.9 | 155 | 4.3 | 139 | 3.3 | 224 | 4.1 | 137 | 3.9 |
| Probation only ⁵ | 73 | 3.3 | 142 | 4.7 | 156 | 4.3 | 196 | 4.7 | 248 | 4.6 | 131 | 3.7 |
| Theft/Fraud §2B1.1 or §2F1.1¹ | 8,979 | 100.0 | 9,015 | 100.0 | 8,768 | 100.0 | 9,243 | 100.0 | 9,606 | 100.0 | 4,403 | 100.0 |
| Prison only ² | 4,101 | 45.7 | 4,253 | 47.2 | 4,339 | 49.5 | 4,531 | 49.0 | 4,803 | 50.0 | 2,345 | 53.3 |
| Prison plus confinement conditions ³ | 1,069 | 11.9 | 1,077 | 11.9 | 1,053 | 12.0 | 959 | 10.4 | 840 | 8.7 | 412 | 9.4 |
| Probation plus confinement conditions ⁴ | 1,543 | 17.2 | 1,540 | 17.1 | 1,481 | 16.9 | 1,421 | 15.4 | 1,463 | 15.2 | 556 | 12.6 |
| Probation only ⁵ | 2,266 | 25.2 | 2,145 | 23.8 | 1,895 | 21.6 | 2,332 | 25.2 | 2,500 | 26.0 | 1,090 | 24.8 |

¹Sections report only cases with one single guideline application using the indicated guideline. Cases receiving only monetary sentences are excluded.

²Prison only cases receive straight prison time.

³Prison plus confinement cases receive a combination of prison time and alternative confinement time as defined in USSG §5C1.1.

⁴Probation plus confinement cases receive, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁵Probation only cases receive straight probation time.

SOURCE: U.S. Sentencing Commission, 1999-2003 Fiscal Year Datafiles, USSCFY99-USSCFY03; Special Post-Booker Coding Project BOOKER05 (data extraction on September 1, 2005; table prepared September 15, 2005).

Average and Median Sentence Imposed¹ for the Most Frequently Applied Guidelines

Fiscal Year 1999 and Fiscal Year 2000

| | Fiscal Year 1999 | | | | Fiscal Year 2000 | | | |
|--|-------------------|------------------|---------------------------|---------------|-------------------|------------------|---------------------------|---------------|
| | Average Months | Median Months | GL Median ² | N | Average Months | Median Months | GL Median ² | N |
| All Cases (one guideline computation)³ | 51 | 30 | | 48,611 | 50 | 30 | | 51,342 |
| Drug Trafficking §2D1.1⁴ | 71 | 48 | 60 | 20,763 | 72 | 50 | 60 | 21,715 |
| Prison only ⁵ | 74 | 51 | 60 | 19,406 | 74 | 57 | 63 | 20,422 |
| Prison plus confinement conditions ⁶ | 26 | 10 | 18 | 481 | 21 | 10 | 21 | 430 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 12 | 400 | 6 | 6 | 12 | 379 |
| Probation only ⁸ | 0 | 0 | — | 476 | 0 | 0 | — | 484 |
| Immigration Unlawful Entry §2L1.2⁴ | 35 | 30 | 46 | 5,547 | 36 | 33 | 46 | 6,341 |
| Prison only ⁵ | 35 | 30 | 46 | 5,495 | 36 | 33 | 33 | 6,291 |
| Prison plus confinement conditions ⁶ | 33 | 33 | 70 | 13 | 21 | 10 | 10 | 10 |
| Probation plus confinement conditions ⁷ | — | — | — | 2 | — | — | — | 1 |
| Probation only ⁸ | 0 | 0 | — | 37 | 0 | 0 | — | 39 |
| Firearms §2K2.1⁴ | 58 | 37 | 37 | 2,218 | 53 | 37 | 37 | 2,997 |
| Prison only ⁵ | 62 | 41 | 41 | 1,976 | 57 | 37 | 41 | 2,604 |
| Prison plus confinement conditions ⁶ | 21 | 10 | 12 | 82 | 23 | 10 | 12 | 104 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 12 | 87 | 7 | 6 | 12 | 147 |
| Probation only ⁸ | 0 | 0 | — | 73 | 0 | 0 | — | 142 |
| Theft/Fraud §2B1.1 or §2F1.1⁴ | 14 | 10 | 10 | 8,979 | 14 | 10 | 10 | 9,015 |
| Prison only ⁵ | 18 | 14 | 15 | 4,101 | 19 | 15 | 15 | 4,253 |
| Prison plus confinement conditions ⁶ | 9 | 8 | 8 | 1,069 | 9 | 8 | 8 | 1,077 |
| Probation plus confinement conditions ⁷ | 5 | 6 | 6 | 1,543 | 5 | 6 | 6 | 1,540 |
| Probation only ⁸ | 0 | 0 | — | 2,266 | 0 | 0 | — | 2,145 |

¹Sentence data report the sum of imprisonment and any type of confinement as defined in USSG §5C1.1.

²For the guideline range of the sentencing table applied to the case, the lower value of the sentencing range.

³All statistics in the table report data for cases with one single guideline computation for the specified fiscal year. The “All Cases” row reports all cases regardless of the one guideline applied. Cases receiving only monetary sentences are excluded.

⁴Each guideline-specific section reports only cases with one single guideline application using the indicated guideline.

⁵Prison only sentence categories report straight prison time.

⁶Prison plus confinement sentence categories report the sum of prison time and alternative confinement time as defined in USSG §5C1.1.

⁷Probation plus confinement categories report statistics for cases receiving, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁸Probation only categories report cases receiving straight probation time. By definition, the confinement time is zero months for these cases.

SOURCE: U.S. Sentencing Commission, 1999 and 2000 Fiscal Year Datafiles, USSCFY99 and USSCFY00.

Average and Median Sentence Imposed¹ for the Most Frequently Applied Guidelines

Fiscal Year 2001 and Fiscal Year 2002

| | Fiscal Year 2001 | | | | Fiscal Year 2002 | | | |
|--|-------------------|------------------|---------------------------|---------------|-------------------|------------------|---------------------------|---------------|
| | Average Months | Median Months | GL Median ² | N | Average Months | Median Months | GL Median ² | N |
| All Cases (one guideline computation)³ | 50 | 30 | | 51,809 | 51 | 30 | | 55,856 |
| Drug Trafficking §2D1.1⁴ | 70 | 48 | 60 | 22,608 | 71 | 51 | 60 | 24,013 |
| Prison only ⁵ | 72 | 51 | 60 | 21,143 | 74 | 57 | 57 | 22,407 |
| Prison plus confinement conditions ⁶ | 29 | 10 | 18 | 469 | 22 | 10 | 10 | 515 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 12 | 488 | 6 | 6 | 6 | 465 |
| Probation only ⁸ | 0 | 0 | — | 508 | 0 | 0 | — | 626 |
| Immigration Unlawful Entry §2L1.2⁴ | 35 | 30 | 46 | 5,946 | 30 | 27 | 30 | 6,993 |
| Prison only ⁵ | 35 | 30 | 46 | 5,901 | 30 | 27 | 30 | 6,952 |
| Prison plus confinement conditions ⁶ | 20 | 10 | 12 | 14 | 20 | 10 | 10 | 7 |
| Probation plus confinement conditions ⁷ | — | — | — | 1 | — | — | — | 0 |
| Probation only ⁸ | 0 | 0 | — | 30 | 0 | 0 | — | 34 |
| Firearms §2K2.1⁴ | 52 | 37 | 37 | 3,629 | 53 | 37 | 37 | 4,173 |
| Prison only ⁵ | 56 | 40 | 41 | 3,177 | 57 | 37 | 37 | 3,680 |
| Prison plus confinement conditions ⁶ | 22 | 10 | 15 | 141 | 18 | 10 | 12 | 158 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 12 | 155 | 6 | 6 | 12 | 139 |
| Probation only ⁸ | 0 | 0 | — | 156 | 0 | 0 | — | 196 |
| Theft/Fraud §2B1.1 or §2F1.1⁴ | 15 | 10 | 12 | 8,768 | 16 | 10 | 12 | 9,243 |
| Prison only ⁵ | 20 | 15 | 15 | 4,339 | 20 | 15 | 15 | 4,531 |
| Prison plus confinement conditions ⁶ | 9 | 8 | 8 | 1,053 | 9 | 10 | 10 | 959 |
| Probation plus confinement conditions ⁷ | 5 | 6 | 6 | 1,481 | 6 | 6 | 6 | 1,421 |
| Probation only ⁸ | 0 | 0 | — | 1,895 | 0 | 0 | — | 2,332 |

¹Sentence data report the sum of imprisonment and any type of confinement as defined in USSG §5C1.1.

²For the guideline range of the sentencing table applied to the case, the lower value of the sentencing range.

³All statistics in the table report data for cases with one single guideline computation for the specified fiscal year. The “All Cases” row reports all cases regardless of the one guideline applied. Cases receiving only monetary sentences are excluded.

⁴Each guideline-specific section reports only cases with one single guideline application using the indicated guideline.

⁵Prison only sentence categories report straight prison time.

⁶Prison plus confinement sentence categories report the sum of prison time and alternative confinement time as defined in USSG §5C1.1.

⁷Probation plus confinement categories report statistics for cases receiving, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁸Probation only categories report cases receiving straight probation time. By definition, the confinement time is zero months for these cases.

SOURCE: U.S. Sentencing Commission, 2001 and 2002 Fiscal Year Datafiles, USSCFY01 and USSCFY02.

Average and Median Sentence Imposed¹ for the Most Frequently Applied Guidelines

Fiscal Year 2003 and Post-Booker Fiscal Year 2005 (data extracted September 1, 2005)

| | Fiscal Year 2003 | | | | Post-Booker FY2005 | | | |
|--|-------------------|------------------|---------------------------|---------------|--------------------|------------------|---------------------------|---------------|
| | Average Months | Median Months | GL Median ² | N | Average Months | Median Months | GL Median ² | N |
| All Cases (one guideline computation)³ | 52 | 30 | | 60,786 | 55 | 34 | | 33,396 |
| Drug Trafficking §2D1.1⁴ | 77 | 57 | 63 | 23,833 | 83 | 60 | 70 | 12,659 |
| Prison only ⁵ | 79 | 60 | 70 | 22,455 | 85 | 62 | 77 | 11,953 |
| Prison plus confinement conditions ⁶ | 20 | 10 | 15 | 402 | 20 | 10 | 21 | 281 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 12 | 469 | 6 | 6 | 18 | 188 |
| Probation only ⁸ | 0 | 0 | — | 507 | 0 | 0 | — | 237 |
| Immigration Unlawful Entry §2L1.2⁴ | 28 | 24 | 27 | 9,167 | 28 | 24 | 27 | 5,452 |
| Prison only ⁵ | 28 | 24 | 27 | 9,132 | 28 | 24 | 27 | 5,404 |
| Prison plus confinement conditions ⁶ | 22 | 10 | 10 | 11 | 11 | 10 | 15 | 12 |
| Probation plus confinement conditions ⁷ | — | — | — | 2 | — | — | — | 1 |
| Probation only ⁸ | 0 | 0 | — | 22 | 0 | 0 | — | 35 |
| Firearms §2K2.1⁴ | 56 | 37 | 37 | 5,425 | 58 | 37 | 37 | 3,541 |
| Prison only ⁵ | 59 | 41 | 41 | 4,779 | 61 | 41 | 41 | 3,161 |
| Prison plus confinement conditions ⁶ | 21 | 10 | 12 | 174 | 29 | 11 | 12 | 112 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 12 | 224 | 6 | 6 | 12 | 137 |
| Probation only ⁸ | 0 | 0 | — | 248 | 0 | 0 | — | 131 |
| Theft/Fraud §2B1.1 or §2F1.1⁴ | 16 | 12 | 12 | 9,606 | 20 | 12 | 15 | 4,403 |
| Prison only ⁵ | 21 | 16 | 18 | 4,803 | 25 | 18 | 18 | 2,345 |
| Prison plus confinement conditions ⁶ | 9 | 10 | 10 | 840 | 10 | 10 | 10 | 412 |
| Probation plus confinement conditions ⁷ | 6 | 6 | 6 | 1,463 | 6 | 6 | 6 | 556 |
| Probation only ⁸ | 0 | 0 | — | 2,500 | 0 | 0 | — | 1,090 |

¹Sentence data report the sum of imprisonment and any type of confinement as defined in USSG §5C1.1.

²For the guideline range of the sentencing table applied to the case, the lower value of the sentencing range.

³All statistics in the table report data for cases with one single guideline computation for the specified fiscal year. The “All Cases” row reports all cases regardless of the one guideline applied. Cases receiving only monetary sentences are excluded.

⁴Each guideline-specific section reports only cases with one single guideline application using the indicated guideline.

⁵Prison only sentence categories report straight prison time.

⁶Prison plus confinement sentence categories report the sum of prison time and alternative confinement time as defined in USSG §5C1.1.

⁷Probation plus confinement categories report statistics for cases receiving, as a condition of probation, alternative confinement time as defined in USSG §5C1.1.

⁸Probation only categories report cases receiving straight probation time. By definition, the confinement time is zero months for these cases.

SOURCE: U.S. Sentencing Commission, 2003 Fiscal Year Datafile, USSCFY03; Special Post-Booker Coding Project BOOKER05 (data extraction on September 1, 2005; table prepared September 15, 2005).